

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Review of the Definition of)	
Universal Service)	
)	

To: The Joint Board

**COMMENTS
OF THE
UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (“USTA”)¹ hereby submits its comments on the review of the definition of universal service, as sought by the Joint Board in its *Public Notice* in the above-captioned proceeding.² In the *Public Notice*, the Joint Board seeks comment on what services, if any, should be added to or removed from the list of core services eligible for federal universal service support and how those core services should be defined.

¹ The United States Telecom Association, formerly the United States Telephone Association, is the nation’s oldest trade organization for the local exchange carrier industry. USTA represents more than 1200 telecommunications companies worldwide that provide a full array of voice, data and video services over wireline and wireless networks. USTA members support the concept of universal service and are leaders in the deployment of advanced telecommunications capabilities to American and international markets.

² FCC 01-J-1, released August 21, 2001, 66 Fed. Reg. 46461 (2001) (“*Public Notice*”).

In its *Report and Order* adopted in 1997,³ the Commission generally followed the Joint Board's recommendation⁴ and adopted the current definition of "core" or "designated" services to be supported by the federal universal service support mechanisms. Those services include:

- Single-party service
- Voice grade access to the public switched network
- Dual Tone Multifrequency signaling or its functional equivalent
- Access to emergency services
- Access to operator services
- Access to interexchange services
- Access to directory assistance
- Toll limitation services for qualifying low-income consumers

In designating these services for inclusion, both the Joint Board and the Commission recognized that the four criteria set forth in Section 254(c)(1) of the Communications Act of 1934, as amended, (the "Act")⁵ must be considered in evaluating each service.⁶ Those criteria are the extent to which the services "(A) are essential to education, public health, or public safety; (B) have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers; (C) are being deployed in public telecommunications networks by telecommunications carriers; and (D) are consistent with the public interest, convenience, and necessity."⁷

³ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Report and Order*, 12 FCC Rcd 8776, 8807-8825 (1997) ("*First Report and Order*").

⁴ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Recommended Decision*, 12 FCC Rcd 87, 103-124 (1996) ("*Recommended Decision*").

⁵ 47 U.S.C. § 254(c)(1).

⁶ *Recommended Decision*, 12 FCC Rcd at 104-105; *First Report and Order*, 12 FCC Rcd at 8809.

⁷ 47 U.S.C. § 254(c)(1).

In December 2000, the Commission determined that it should engage in a review of the current definition of universal service, in conformance with the provisions of the Act.⁸ The Commission directed the Joint Board to review the definition and, if warranted, to make recommendations for change.

For the reasons stated below, USTA advocates that the current core services be retained for universal service support and that no additional services be included. USTA also believes that the Commission should consider all of the universal service proceedings that potentially impact the size of the fund, including this definitional review, with a synergistic approach.

I. The current list of core services should be retained and no additional services should be added.

The language of Section 254(c)(1) of the Act is clear. The Joint Board and the Commission “shall consider” the four criteria listed in evaluating whether to include specific telecommunications services for universal service support. Both the Joint Board and the Commission have acknowledged this fact.⁹ Although the Joint Board and the Commission stated that the services did not need to meet each of the four criteria to be included in the universal service definition,¹⁰ in fact, both the Joint Board and the Commission engaged in a full examination of every one of the services included in the universal service definition and generally found that those core services actually comply

⁸ See 47 U.S.C. §§ 254(c)(1) and (2).

⁹ *Recommended Decision*, 12 FCC Rcd at 104-105; *First Report and Order*, 12 FCC Rcd at 8809.

¹⁰ *Id.*

with most of those criteria.¹¹ USTA believes that this same process should be followed in determining whether to modify the core services at this time.

In requiring the Joint Board and the Commission to consider the four criteria by employing the statutory language “shall consider,” Congress created an expectation that the services included in the definition of universal service would generally meet those criteria. Otherwise, Congress would not have ordered the Joint Board and the Commission to engage in a frivolous exercise of evaluating criteria and then ignoring them.

In considering the question now before the Joint Board of whether to recommend modification of the core universal services, the Joint Board must again comply with the directive contained in Section 254(c)(1). Applying these four criteria to additional services, USTA believes that no additional service meets those criteria today. Likewise, USTA believes that the existing core services currently included in the universal service definition continue to meet those criteria. Therefore, USTA supports retention of the current core services.

The *Public Notice* specifically raises the question of whether “soft dial tone” or “warm line” services should be included in the list of core services. An offering must first be a “telecommunications service,” pursuant to Section 254(c)(1), in order to qualify for inclusion as a supported universal service. In addressing these particular offerings, USTA assumes that the soft dial tone or warm line services referenced in the *Public Notice* address only those situations where a subscriber’s local service is disconnected for nonpayment and the local service provider maintains the subscriber’s access to

¹¹ *Recommended Decision*, 12 FCC Rcd at 111-116; *First Report and Order*, 12 FCC Rcd at 8809-8822.

emergency services, *i.e.*, 911, and the provider's business office following such disconnection.

As defined in Section 3 (46) of the Act,¹² a telecommunications service “means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.” Applying this definition to “soft dial tone” and “warm line” offerings, USTA does not believe that they qualify as telecommunications services because they are not offered for a fee directly to the public and are not made directly available to classes of users on a wide basis. Therefore, USTA believes that those two offerings are not eligible to be included in the universal service definition, even without reaching an evaluation of the four statutory criteria contained in Section 254(c)(1).

II. The Commission should consider all those universal service proceedings impacting the size of the fund synergistically.

The current review of the definition of universal service has the potential to impact the size of the universal service fund. The Commission has instituted a number of other proceedings whose outcome will also directly affect the size of the fund. Those proceedings involve a further notice on carrier contributions and the manner in which carriers may recover costs from their customers,¹³ pending reconsideration petition on the modification of the base for universal service support,¹⁴ a further notice on universal service reform for rate of return carriers and related issues to the Multi-Association

¹² 47 U.S.C. § 153(46).

¹³ *Notice of Proposed Rulemaking*, CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, and 95-116, 66 Fed. Reg. 28718 (2001).

¹⁴ USTA Petition for Reconsideration of the Report and Order and Order on Reconsideration, CC Docket No. 96-45, 66 Fed. Reg. 16145 (2001) filed on April 23, 2001.

Group (“MAG”) proposal,¹⁵ intercarrier compensation,¹⁶ the Tenth Circuit remand of the Commission’s establishment of a 135 percent funding benchmark for non-rural carriers,¹⁷ and the Fifth Circuit’s remand of the Commission’s establishment of a \$650 million universal service fund as replacement for removal of implicit contributions from access charges by non-rural carriers.¹⁸ In *Qwest v. FCC*, the Court stated that it did “not know the full extent of federal support for universal service” and that “[o]n remand, the FCC will have an opportunity to explain further its complete plan for supporting universal service.” Those proceedings whose outcome will determine with more certainty the obligations of telecommunications carriers should be considered in a coordinated manner by the Commission.¹⁹

This synergistic approach is necessary because it is essential and, indeed, required by Section 254(b) of the Act that the universal service fund provide explicit and sufficient support. It is for this reason that USTA continues to advocate removal of the “interim” cap on high cost loop support and the corporate operations expense limitation. The current caps artificially limit universal service support available to rural carriers and non-

¹⁵ *Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166*, News Release, October 11, 2001.

¹⁶ *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Notice of Proposed Rulemaking*, FCC 01-132, released April 27, 2001; *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68, *Order on Remand and Report and Order*, FCC 01-131, released April 27, 2001.

¹⁷ *Qwest Corp. v. FCC*, 258 F.3d 1191 (10th Cir. 2001) (“*Qwest v. FCC*”).

¹⁸ *Texas Office of Public Utility Counsel v. FCC*, No. 00-60434 (5th Cir. Sept. 10, 2001) (“*Texas v. FCC*”).

¹⁹ USTA recognizes that the Joint Board is acting at the direction of the Commission and that the comments in this section pertain more broadly to the Commission’s action than to the Joint Board’s substantive review of the definition of universal service.

rural carriers still receiving hold harmless support, if any. They also introduce unpredictability for carriers. Removal would provide carriers with greater incentives to provide improved basic services while making investments in the network. Furthermore, any change in the definition of universal service would require an adjustment in the level of support. Removal of the caps would allow necessary adjustments.²⁰

V. Conclusion

For the foregoing reasons, USTA advocates retention of the current core services for universal service support but opposes expansion of the universal service definition to include any additional services.

Respectfully submitted,

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²⁰ The Rural Task Force recommended that the indexed cap be resized whenever the definition of supported services is changed. Rural Task Force Recommendation, FCC OOI-4, released December 22, 2000.